IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.8628 of 2007

DATE OF DECISION: 10.07.2007.

Gurnam Singh ....Petitioner

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR.JUSTICE M.M.S. BEDI

PRESENT: Mr. Ashok Sharma Nabhewala,Advocate,
for the petitioner.

J.S. Khehar, J.

The petitioner was inducted into the service of the Revenue Department of the State Government as a Patwari in 1983. In 1996 he was promoted as Kanungo.

In the year 2000, while the petitioner was holding the post of Kanungo, a criminal case was registered against the petitioner by the Vigilance Department of the State Government under sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, wherein it was alleged that the petitioner demanded illegal gratification of Rs.2,000/- for making a favourable report in respect of demarcation of land of one Sukhwinder Singh, a resident of village Mohtanwala in district Kapurthala. Consequent upon the criminal prosecution initiated against the petitioner, he was found guilty on the charges levelled against him by the Special Judge, Kapurthala, vide his judgment/order dated 7.6.2004. The petitioner was consequently sentenced to imprisonment of four years

and fine of a sum of Rs.1,000/-.

The pleadings of the instant writ petition reveal, that the petitioner was issued a show cause notice on 15.6.2004, proposing the punishment of dismissal from service, in exercise of powers conferred on the appointing authority under rule 13(1)(ii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, read with Article 311(2)(a) of the Constitution of India, in view of his conviction at the hands of a criminal Court under the provisions of the Prevention of Corruption Act, 1988. The petitioner duly submitted his response thereto. Having considered the aforesaid reply, the District Collector, Kapurthala, by his order dated 19.7.2004 dismissed the petitioner from service with effect from 4.6.2004.

The petitioner challenged the order of his dismissal from service dated 19.7.2004, first by filing an appeal before the Commissioner, Jalandhar Division, Jalandhar. The same was, however, declined by an order dated 1.4.2005. The petitioner then availed of his revisional remedy before the Financial Commissioner, Punjab. The revision filed by the petitioner came to be dismissed on 30.5.2006. The order of the Financial Commissioner, Punjab, is stated to have been communicated to the petitioner only on 9.4.2007, which prompted the petitioner to file the instant writ petition, so as to impugn the action of the respondents in dismissing him from service.

Before this Court, the first contention advance by the learned counsel for the petitioner was, that the petitioner has preferred Criminal Appeal No.1283-SB of 2004 against the judgment and order passed by the Special Judge, Kapurthala, dated 7.6.2004. The aforesaid appeal was

admitted by this Court on 2.7.2004 and the sentence imposed upon the petitioner by the Special Judge, Kapurthala, is stated to have been suspended by an order dated 17.9.2004, wherein this Court directed the petitioner to be released on bail.

Treating the factum of the pendency of Criminal Appeal No.1283-SB of 2004, as well as, the order of release of the petitioner on bail dated 17.9.2004 as the foundation of his contention it is submitted that the authorities should not have taken the impugned action of dismissing the petitioner from service till the culmination of the appellate proceedings initiated by the petitioner against the order of his conviction at the hands of the Special Judge Kapurthala, dated 7.6.2004. In this behalf, it is the contention of the learned counsel for the petitioner, that as soon as the petitioner preferred an appeal against the order of his conviction dated 7.6.2004, the impugned order of dismissal from service could not have been passed. It is pointed out that when the appellate Court i.e. this Court entertained the appeal preferred by the petitioner, the order passed by the trial Court ceased to be a final adjudication in the criminal case initiated against him.

It is not necessary for us to delve at any length into the issue canvassed by the learned counsel for the petitioner, in view of the fact, that the law on the subject has been clearly declared by the Supreme Court in Deputy Director of Collegiate Education (Administration), madras V. S. Nagoor Meera, AIR 1995 S.C. 1364. In the aforesaid case the Apex Court was considering the exercise of power under clause (a) of the second proviso to Article 311(2) of the Constitution of India, wherein, after the conviction of the employee, he had preferred an appeal and the

High Court in exercise of its appellate power had suspended the sentence imposed upon him. Despite the aforesaid position, the Supreme Court held as under:-

> "The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court."

Since this Court has merely suspended the sentence imposed on the petitioner by the Special Judge, Kapurthala, and not his conviction, the claim of the petitioner, at the instant juncture, on the basis of the order passed by this Court on 17.9.2004, whereby the petitioner has been directed to be released on bail, cannot be a valid justification for impugning the action taken by the employer of the petitioner.

The second contention advanced by the learned counsel for the petitioner is based on action taken by the authorities in allegedly identical circumstances, wherein the conviction of the concerned Government employees was subject matter of appellate/revisional proceedings, as in the case of the petitioner. The petitioner claims discrimination at the hands of the respondents, because in allegedly identical circumstances others similarly situated as the petitioner, were reinstated into service, whereas the petitioner has not been given the same benefit. Reference in this behalf was made to orders appended to the writ petition as Annexures P8 to P11.

Although the second contention of the learned counsel for the petitioner appears to be attractive on first blush, yet it is not possible to accept even the instant contention. It has now been repeatedly held by the Apex Court that a plea of discrimination can be raised in respect of an order validly passed in accordance with law and not in respect of an order, which is per se illegal In view of the judgment rendered by the Apex Court in S.Nagoor Meera's case (supra), we are satisfied, that the orders of reinstatement of employees at the hands of the respondents, whose cases have been cited to raise the plea of discrimination, cannot be accepted to have been validly passed in consonance with law. On the instant proposition, reference may be made to the decision rendered by the Supreme Court in Chandigarh Administration & Anr. V. Jagjit Singh & Anr., Etc., JT 1995(1) S.C. 445 wherein it has been held as under:-

> "..... Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over

> again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. ....."

None of the persons in whose cases favourable orders have allegedly been passed (Annexures P8 to P11) have been impleaded as party respondents. It is, therefore, not within our purview to record any adverse finding in respect of such persons. Be that as it may, we consider it just and appropriate to direct respondent No.1 to re-examine the cases of all such employees in terms of the judgment rendered by the Apex Court in S.Nagoor Meera's case (supra) and in case, it is found that the law declared in the aforesaid judgment has been overlooked, to take such appropriate remedial measures as may be necessary in accordance with law. It will, however, be imperative for the respondents to issue an appropriate show cause notice, as also, to afford an effective opportunity of hearing before any adverse order is passed against any such employee who has been reinstated in service.

The instant writ petition is disposed of in the aforesaid terms.

(J.S. Khehar)
Judge

(M.M.S. Bedi)
Judge

July 10, 2007.
vig